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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

5 MONICA HINOSTROZA,

6 Plaintiff,

7 vs.

8 DENNY'S INC.,

9 Defendant.

Case No. 2:17-cv-02561-RFB-NJK

ORDER

(Docket No. 37)

10 Pending before the Court is Defendant's motion for order to show cause for failure to  
11 comply with court order. Docket No. 37. Defendant submits that Plaintiff failed to comply with  
12 the Court's order granting its motion to compel discovery. *Id.* At 3-4. *See* Docket No. 36 (Order  
13 granting motion to compel discovery). The Court has considered Defendant's motion, Plaintiff's  
14 response,<sup>1</sup> and Defendant's reply. Docket Nos. 37, 40, 41. This motion is properly resolved  
15 without a hearing. Local Rule 78-1.

16 **I. BACKGROUND**

17 On December 6, 2018, the Court granted Defendant's motion to compel discovery and  
18 ordered Plaintiff to provide certain documents and information to Defendant, no later than  
19 December 14, 2018. Docket No. 36. Defendant now submits that Plaintiff failed to comply with  
20 the Court's order. Docket No. 37. Specifically, Defendant submits that Plaintiff failed to comply

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22 <sup>1</sup> Plaintiff's response was due on January 4, 2019. Docket No. 37. Despite this deadline,  
23 Plaintiff filed her response on January 7, 2019. Further, Plaintiff fails to include points and  
authorities in her response. *See* Docket No. 40. Accordingly, Plaintiff has consented to the  
granting of Defendant's motion. Local Rule 7-2(d). Nonetheless, the Court considers the motion,  
response, and reply on their merits.

1 with the Court's order to verify her answers to Defendant's Second Set of Interrogatories; answer  
2 Interrogatory No. 4 in its Second Set of Interrogatories; provide documents concerning her  
3 subsequent auto accidents; supplement her responses to Defendant's Requests No. 70 and 71;  
4 provide her employment records with The Peruvian Place; provide documents in response to  
5 Defendant's Request for Production No. 1 in Defendant's Sixth Set of Requests, and Requests for  
6 Production Nos. 1, 2, 3, and 4 in Defendant's Seventh Set of Requests; and produce her expert Mr.  
7 Jennings' job file. *Id.* at 3. Defendant further submits that Plaintiff failed to allow Defendant to  
8 depose Mr. Jennings by January 13, 2019. *Id.* at 3-4. Finally, Defendant submits that it filed the  
9 instant motion because Plaintiff's counsel has not responded to its counsel's requests for  
10 information and will not return phone calls. *Id.* at 5-6. Therefore, Defendant asks the Court to  
11 issue an order to show cause. *Id.* at 6.

12 In response, Plaintiff submits that her counsel is new to this case and to his current law  
13 firm, and that Plaintiff's prior counsel and Defendant's counsel were "frequently at juggernauts in  
14 regard to discovery," resulting in "the filing of many discovery motions." Docket No. 40 at 2.  
15 Plaintiff submits that discovery "has not gone smoothly." *Id.* Further, Plaintiff concedes that she  
16 has "on occasion" failed to timely respond to Defendant's discovery requests. *Id.* Plaintiff submits  
17 that the fault for this delay lies with Plaintiff herself and not her counsel. *Id.* Plaintiff's counsel  
18 certifies that he has "personally tried, numerous times, to just get in touch with [Plaintiff] and that  
19 when he is able to speak to her she promises him "that information or documents will be  
20 forthcoming shortly" but that, many times, "this does not happen." *Id.* at 15. Additionally,  
21 Plaintiff submits that she does not speak English, suffers from debilitating pain, and is currently  
22 pregnant. *Id.* at 2. Plaintiff further submits, without any support, that her counsel believes that  
23 she is being abused by her husband. *Id.* at 2, 15. The rest of Plaintiff's response is devoted to

1 attacking defense counsel and reiterating arguments that the Court has already considered and  
2 rejected in granting Defendant’s motion to compel. *Id.* at 3-11. Plaintiff fails to address her failure  
3 to comply with the Court’s order. *See, generally*, Docket No. 40.

4 In reply, Defendant submits that Plaintiff’s response “outlines the case why sanctions  
5 should be considered, including the possibility of dismissing her case. Docket No. 41 at 3.  
6 Defendant submits that Plaintiff’s conduct in the instant case has been evasive and demonstrates  
7 that she does not want to participate in this case. *Id.* At 3, 12. Defendant further submits that  
8 Plaintiff made numerous misrepresentations to the Court. *Id.* at 3-4, 5-6. Defendant also responds  
9 to the attacks against its counsel in Plaintiff’s response. *Id.* at 6-7. Additionally, Defendant asks  
10 the Court not to consider Plaintiff’s response as it is untimely, does not cite to points and  
11 authorities, and fails to make any showing why Defendant’s motion should not be granted. *Id.* at  
12 5. Further, Defendant responds to the discovery arguments Plaintiff reiterated in her response. *Id.*  
13 at 8-14. At its core, Defendant submits, the filings demonstrate that the Court ordered Plaintiff to  
14 supplement her discovery responses, Plaintiff failed to comply with the Court’s order, and  
15 Plaintiff’s counsel refused to communicate with Defendant’s counsel to resolve the issue. *Id.* at 3.  
16 Therefore, Defendant asks the Court to grant its motion for an order to show cause. *Id.* at 15.

## 17 **II. ANALYSIS**


18 Parties and attorneys are required to follow Court orders. Federal Rule of Civil Procedure  
19 16(f) requires parties and attorneys to comply with pretrial orders and provides that a judge may  
20 order appropriate sanctions, including those outlined in Rule 37(b)(2)(A)(ii)-(vii), for non-  
21 compliance. Further, Plaintiff is required to prosecute her case. Fed.R.Civ.P. 41(b). Similarly,  
22 the Local Rules make clear that the Court may “impose any and all appropriate sanctions on an  
23 attorney or party who ... [f]ails to comply with any order of this court.” Local Rule IA 11-8(d).

1 Defendant asks the Court for an order to show cause why Plaintiff has violated the Court's  
2 order at Docket No. 36. In addition, Defendant submits that Plaintiff has failed to produce  
3 discovery on numerous occasions, her expert has failed to appear for deposition, and her counsel  
4 has failed to communicate with defense counsel. Plaintiff's response seemingly concedes that  
5 Plaintiff has not engaged in the discovery process.

6 Accordingly, Defendant's motion for order to show cause, Docket No. 37, is **GRANTED**.  
7 Plaintiff and her attorney must show cause in writing, no later than January 30, 2019, why the  
8 Court should not issue sanctions against one or both for violating a Court order, up to and including  
9 Defendant's attorneys' fees and costs for the filing of the motion for order to show cause and/or a  
10 Court fine of up to \$500 each, and/or case-dispositive sanctions for failure to prosecute, pursuant  
11 to Federal Rule of Civil Procedures 16(f) and 41(b), and Local Rule IA 11-8(d). The response  
12 must include a declaration from Plaintiff addressing, *inter alia*, the reasons she failed to comply  
13 with the Court order, the reasons she has failed to provide necessary discovery throughout the  
14 discovery process, and whether her discovery failures are due to a lack of intent to prosecute the  
15 instant case. Defendant may, if it chooses, respond to the written response, no later than February  
16 4, 2019.

17 IT IS SO ORDERED.

18 DATED: January 16, 2019.

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21 NANCY J. KOPPE  
22 UNITED STATES MAGISTRATE JUDGE  
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